In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 843

WARD M. VANDERPOOL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was indicted for knowingly filing a false partnership return and for willfully attempting to evade income taxes of about $34,000 for the year 1952 (R. 4–6).[1] He pleaded guilty on both counts (R. 10). On November 17, 1961, District Judge Miner suspended imposition of sentence; placed petitioner on probation for three years "upon the special condition that he make payment of the civil liability to the best of his ability"; and ordered him to pay a fine of $20,000 within 60 days (R. 12). The judge stated that he was not adjudicating petitioner's civil tax liability,

[1] "R." references are to petitioner's appendix in the court below.

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and that petitioner was free to litigate that matter (R. 11–12). Petitioner paid the fine within a short time, but has never voluntarily paid any of the taxes (R. 19, 21, 123). In October 1964 the government instituted a proceeding to revoke probation on the ground that petitioner had not complied with the conditions of his probation by making a good faith effort to settle his civil tax liability (R. 14–17). Judge Miner having died, the case was reassigned to Judge Decker, who after hearing testimony for two days (R. 23–292), revoked petitioner's probation and sentenced him to imprisonment for eighteen months (R. 308–309, 315–320, 327–328). The court of appeals affirmed the judgment without opinion (Pet. App. 1–2).

There was evidence at the hearing before Judge Decker to show that petitioner's civil tax liability for the year 1952 had been assessed at about $54,000 [2] (R. 28); that petitioner, rather than making a good faith effort to pay after being placed on probation, set about disposing of his assets for cash in order to prevent the Internal Revenue Service from reaching them by a jeopardy assessment (R. 59, 115); that petitioner obtained about $160,000 cash in this manner during 1962 but paid none of it to Internal Revenue (R. 31, 92); and that he submitted offers in compromise which contained a number of false statements (see, *e.g.*, R. 27–30, 34–60, 91–95, 188–189, 227–

[2] When the penalties and interest are included, the total civil assessment for 1952 was over $111,000 (R. 28–29, 31). The total civil assessments for 1951, 1952, and 1953 amounted to almost $138,000 (R. 96).

233, 243–246). At the conclusion of the hearing Judge Decker stated (R. 318–320):

> The COURT. Well, Mr. Vanderpool, I want to say this to you, I don't think that you are here today simply by reason of the fact that you have failed to pay your civil tax liability. If there weren't some additional factors in this case, I wouldn't have conducted two days of hearings and I wouldn't have spent this amount of time on the question as to whether or not a defendant in a criminal case did or did not comply with an order of the court to make restitution.
>
> The difficulty that your case presents to me is that after you were placed on probation and Judge Miner was good enough to grant probation to you, to give you an opportunity to pay your civil tax liability, that although without any question, as the record clearly shows in this case, you had sufficient assets to pay that $35,000, the $35,000 in this case; you not only failed to pay it, but, in addition to that, from the outset in this case, after you were placed on probation you made what were very plainly false statements to the Government. First of all you said that you had to borrow the money to pay your fine. That was false. Then you filed a financial statement in which you failed to list among your assets certain stocks, and that stock had considerable value.
>
> Throughout the history of this probation period from time to time you have apparently in an attempt to evade the payment of your just obligations converted your money into accounts which would be difficult for the Govern-

ment to reach, you have placed it in four or five or six separate accounts, you put $5,000 here, $5,000 there, and then you completely failed to account for the disposition for receipts, admitted receipts in the year 1962, you had $161,000.

* * * * *

I think that you during your probation period have shown no disposition whatsoever to cooperate with the Government, except on your own terms and I don't think that I can overlook the filing of a fraudulent financial statement in order to secure some concession from the Government in working out your problems.

Petitioner concedes (Pet. 25–26) that the granting of probation is a matter of grace, and that revocation lies within the sound discretion of the trial judge. *Escoe* v. *Zerbst,* 295 U.S. 490; *Burns* v. *United States,* 287 U.S. 216; *Yates* v. *United States,* 308 F. 2d 737, 738–739 (C.A. 10). It is settled that a convicted tax evader may, as a condition of probation, be required to make an effort in good faith to pay his deficiencies; and that when, as here, he not only fails to make such an effort, but actually impedes the Internal Revenue Service by filing false statements and concealing his assets, his probationary status may properly be revoked. *United States* v. *Steiner,* 239 F. 2d 660 (C.A. 7), certiorari denied, 353 U.S. 936; *Hensley* v. *United States,* 257 F. 2d 681 (C.A. 5); *United States* v. *Taylor,* 305 F. 2d 183 (C.A. 4), certiorari denied, 371 U.S. 849; cf. *United States* v. *Taylor,* 321 F. 2d 339 (C.A. 4). Accordingly, Judge Decker had ample grounds

for revoking petitioner's probation;[3] no issue warranting review in this Court is presented.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys.

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[3] Petitioner contends that his compliance with the condition of his probation is shown by his offers in compromise, which were refused by the Internal Revenue Service. The contention is without merit. The offers were extremely low in relation not only to the back taxes petitioner owed but also apparently to his ability to pay. Most importantly, however, as Judge Decker found, the offers were supported by false financial statements designed to conceal from the Service petitioner's true assets. That conduct is hardly consonant with a claim of good faith. Moreover, as Judge Decker noted, petitioner at no time paid, or offered to pay, unconditionally *any* amount towards his tax liability.

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